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**DEC 15 2008**

**OFFICE OF PETITIONS**

In re Patent No. 7,378,247	:	
Muller-Hermelink et al.	:	DECISION ON REQUEST
Issue Date: May 27, 2008	:	FOR RECONSIDERATION OF
Application No. 10/764,730	:	PATENT TERM ADJUSTMENT
Filed: January 26, 2004	:	and
Atty Docket No. 50274/021002	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705" filed July 28, 2008. Patentees request that the Patent Term Adjustment for the above-identified patent be set at 15 days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of fifteen (15) days.

On May 24, 2005, the above-identified application matured into U.S. Patent No. 7,378,247. The instant request for reconsideration filed July 28, 2008 was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of zero (0) days. In essence, Patentees' dispute the reduction of record, one for 120 days associated with the filing of a "miscellaneous incoming letter" received in the Office on January 22, 2008. Patentees state that the paper filed with the response to the

notice of allowance was a Request for Reconsideration of Patent Term Adjustment with the payment of the issue fee and thus, no reduction is warranted.

Patentees' contention is well taken. The OG Notice states that:

... the Office is publishing this notice to provide guidance in interpreting the provisions of 37 CFR 1.704(c)(10) to clarify that submission of certain papers after a "Notice of Allowance," which do not cause substantial interference and delay in the patent issue process, are not considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application. The following are examples of such papers: (1) Issue Fee Transmittal (PTOL-85B), (2) Power of Attorney, (3) Power to Inspect, (4) Change of Address, (5) Change of Status (small/not small entity status), (6) a response to the examiner's reasons for allowance, and (7) letters related to government interests (e.g., those between NASA and the Office). Therefore, the submission of these papers after a Notice of Allowance will not be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and would not result in reduction of a patent term adjustment pursuant to 37 CFR 1.704(c)(10).

Pursuant to 37 CFR 1.704(e):

Submission of an application for patent term adjustment under § 1.705(b) (with or without request under § 1.705(c) for reinstatement of reduced patent term adjustment) will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraph (c)(10) of this section.

A review of the documents submitted on January 22, 2008 shows that the following documents were submitted: issue fee transmittal, a request for reconsideration of patent term adjustment (candor letter) and a transmittal letter (miscellaneous incoming letter).

In view thereof, the patent term adjustment indicated on the patent should be fifteen (15) days.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by FIFTEEN (15) days.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Charlema Grant at (571) 272-3215.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized flourish at the end.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE  
**CERTIFICATE OF CORRECTION**

PATENT : 7,378,247 B2  
DATED : May 27, 2008  
INVENTOR(S) : MULLER-HERMELINK, et al.

DRAFT.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 526 days

Delete the phrase "by 0 days" and insert – by 15 days--